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No. 790

In the Supreme Court of the United States

OCTOBER TERM, 1931

THOMAS C. EDWARDS

v.

THE UNITED STATES

ON CERTIFICATE FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITE STATES

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OPINION BELOW

The Court of Claims has rendered no opinion in this case.

JURISDICTION

The certificate of the Court of Claims was filed in this Court on March 11, 1932. On the same day the Court of Claims withdrew its decision in *Orange Car & Steel Co.* v. *United States,* referred to on p. 2 of the plaintiff's brief. The question certified also arose in that case which is now pending and undecided in the Court of Claims. The jurisdiction of this Court rests on Section 3 (a) of the Act of February 13, 1925. See *Wheeler Lumber Co.* v. *United States,* 281 U. S. 572.

QUESTION CERTIFIED

The question certified is as follows:

Did the Act of March 5, 1931 (46 Stat. 2163), become a law when it was approved by the President

on March 5, 1931, after the final adjournment on March 4, 1931, of the Congress which had passed it?

More broadly stated, the question is whether the President may approve a bill after the final adjournment of the Congress which has passed it but within ten days of the time it is presented to him.

CONSTITUTIONAL PROVISION INVOLVED

The pertinent provisions of Section 7, Article I, of the Constitution are as follows:

> Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. * * * If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

STATEMENT

Thomas C. Edwards brought suit against the United States in the Court of Claims. The United States contended that the suit was on a contract and that the cause of action had been barred by the statute of limitations (Sec. 156 of the Judicial Code; U. S. C., Title 28, Sec. 262), unless jurisdiction was conferred on the Court of Claims by the Act of March 5, 1931, c. 595, 46 Stat. 2163, which was passed by both Houses of Congress during the Third Session of the 71st Congress, presented to the President March 3 (Cong. Rec., vol. 74, pp. 7250–7251; H. R. 8953), and signed by the President on March 5, 1931, after the final adjournment of the Congress. The certificate states that the President signed it within ten days, Sundays excepted, after it was presented to him. (R. 1.)

As the President acted upon an opinion of the Attorney General (36 Op. A. G. 403), holding that he had power to approve the bill after adjournment of Congress but within ten days after it was presented to him, the officials of the Department of Justice are committed to the view that the bill became a law and are therefore unable to support the claim that the suit was barred by the statute of limitations. But because of the great importance of the question and the need for having it settled by this Court we felt obliged to raise it in the Court of Claims.

The Judiciary Committee of the House of Representatives concluded in 1864 (House Report No. 108, 38th Congress, First Session, June 11, 1864) that the President had no power to approve a bill after the adjournment of the Congress which passed it. We reported the pendency of this cause to the present Chairman of the Judiciary Committee of the House with the suggestion that some one in the House might be designated to appear *amicus curiæ* and present arguments in support of the report which the former Judiciary Committee made.

SUMMARY OF ARGUMENT

The question whether the President may approve a bill while Congress is not in session has arisen in three different situations: First, where the approval was given while Congress was taking a short recess; second, where approval was given after Congress had adjourned *sine die* at the end of a session; and third, where a bill was approved after Congress had finally adjourned at the expiration of the time for which Representatives were elected.

That the President may sign a bill during a short recess of the Congress was settled in *La Abra Silver Mining Co.* v. *United States,* 175 U. S. 423, but the question arising at the end of a session was expressly reserved, and no mention was made of the situation arising when a Congress ends.

There has been no long-continued practical construction of the Constitution which can be accepted

as controlling. President Lincoln signed one bill after the final adjournment of the Congress which passed it, but subsequent legislation prevented a definite adjudication of the question. President Wilson approved a group of bills after the adjournment of a session in reliance on an opinion by Attorney General Palmer. (32 Op. A. G. 225.) President Hoover in March, 1931, in reliance on an opinion of the Attorney General (36 Op. A. G. 403) approved eighteen bills including the one here involved, after the expiration of the 71st Congress. The question has been frequently debated, but the general practice of Presidents to sign bills during sessions of Congress has been induced by a purpose to avoid rather than to decide the question. The state of the precedents is such that the question is an open one to be resolved by a consideration of the constitutional provision.

Congress has no function to perform in respect of bills which have been approved, so there is no good reason why the President should not approve bills after adjournment. Public interest requires that he be given the full ten days contemplated by the Constitution to consider measures passed by Congress. In directing that every bill shall be presented to the President the Constitution provides "if he shall approve, he shall sign it." It does not expressly state when he shall sign it nor that he shall sign it while Congress is in session. The argument that if he may approve a bill after the ad-

journment of Congress he has an indefinite time to act, finds no support in the Constitution. That he must sign within ten days is necessarily implied, for, if he does not and Congress shall have adjourned it is provided that the bill shall fail to become a law.

The argument that the President is a part of the legislative branch when acting on legislation and that his functions terminate when Congress finally adjourns is merely a political theory without any support in the words of the Constitution. Because of the large number of bills presented to Presidents at the end of sessions of Congress in modern times, public interest will be served by holding that he may approve bills after adjournment.

The reasoning of the Court in *Seven Hickory* v. *Ellery*, 103 U. S. 423, supports these conclusions.

ARGUMENT

I

CONSTITUTIONAL PRACTICE AND HISTORICAL PRECEDENTS ARE NOT SO DEFINITE AS TO BE CONTROLLING

The question whether the President may approve a bill while Congress is not in session has arisen in three situations: First, where approval was given while Congress was in recess; second, where approval was given after Congress had adjourned *sine die* at the end of a session; and third, where approval was given after Congress had finally adjourned at the expiration of the time for

which members of the House of Representatives were elected.

In *La Abra Silver Mining Co.* v. *United States,* 175 U. S. 423, it appeared that on December 20, 1892, a bill passed by Congress had been presented to the President and that on December 22, by joint action, the two Houses had taken a recess until January 4, 1893. On December 28, 1892, while the Congress was not actually sitting, the President approved the Act in question. The Court said (p. 455):

> Whether the President can sign a bill after the final adjournment of Congress for the session, is a question not arising in this case, and has not been considered or decided by us. We adjudge—and touching this branch of the case adjudge nothing more—that the act of 1892 having been presented to the President while Congress was sitting and having been signed by him when Congress was in recess for a specified time, but within ten days, Sundays excepted, after it was so presented to him, was effectively approved, and immediately became a law, unless its provisions are repugnant to the Constitution.

The question now arising was not mentioned.

The proceedings in the Constitutional Convention throw no light on the problem.

With the exceptions hereafter noted, it seems to have been traditional with the Presidents to sign bills before adjournment. In 1824 the point was

raised in the Cabinet of President Monroe. Secretary of State Adams thought the President could sign a bill after adjournment. Attorney General Wirt at first agreed but (apparently) changed his mind. Mr. Calhoun thought the bill could not be signed but only because "uniform practice had established a practical construction." The President decided not to sign. (See Memoirs of John Quincy Adams, Vol. 6, pp. 379–381.) Nothing further developed until Congress on March 3, 1863, passed a statute known as the Abandoned and Captured Property Act (Act of March 12, 1863, c. 120, 12 Stat. 820). Congress adjourned *sine die* on March 4, 1863, it being the expiration of the Congress and not merely the end of a session. President Lincoln approved the bill March 12, 1863. By resolution of May 16, 1864, the House of Representatives ordered its Judiciary Committee to report by what warrant the Act was approved and whether it was in force. The Committee unanimously concluded that the Act was not in force. House Report No. 108, 38th Congress, First Session.

The Committee said:

> The ten days' limitation contained in the section above quoted refers to the time during which Congress remains in session, and has no application after adjournment. Hence if the Executive can hold a bill ten days after adjournment, and then approve it, he can as well hold it ten months before approval. This would render the laws of the

> country too uncertain, and could not have been intended by the framers of the Constitution.
>
> The spirit of the Constitution evidently requires the performance of every act necessary to the enactment and approval of laws to be perfect before the adjournment of Congress.

The House took no direct action on the report, but it passed the Act of July 2, 1864, c. 225, 13 Stat. 375, which referred to and amended "the Act approved March 12, 1863."

In *Hodges* v. *United States,* 18 C. Cls. 700, arising under the Abandoned and Captured Property Act, the court discussed the question of its validity, stated that the legislative, executive, and judicial departments tacitly and without question had acquiesced in the validity of the statute, but mentioned the fact that the uniform practice had been from the first organization of the Government for the President not to approve bills after the adjournment of Congress with the single exception of the Abandoned and Captured Property Act. The Court of Claims then expressed no opinion on the question, stating that it was no longer of any practical importance, since all litigation under the provisions of that Act had been completed. In *United States* v. *Weil,* 29 C. Cls. 523, the court had under consideration a bill signed by the President during a short recess of the Congress, presenting the same question decided by this Court in *La Abra Silver*

Mining Co. v. *United States,* 175 U. S. 423, *supra.* The full history of the Abandoned and Captured Property Act of March 12, 1863, is recited in the opinion of the Court of Claims. It is evident that there was ground for the conclusion that subsequent legislation by Congress amounted to an implied re-enactment of the Abandoned and Captured Property Act, thus eliminating any question as to its validity. The opinion of the Court of Claims discussed the question and concluded that the Constitution does not require that a bill be approved by the President while Congress is in session. Chief Justice Richardson, concurring in the view that the approval of the Act during a recess of the Congress was effective, said (pp. 848–849):

> I am not prepared to go further and to express an opinion upon the question not involved in the case whether or not the President has the right to approve a bill after the Congress in which it was passed has expired.
>
> I am impressed with the view which has prevailed and which, with the single exception of the captured and abandoned property act of March 12, 1863, has been adopted and followed in practice ever since the foundation of the Government, that the President for the time being is part of the legislative power of each separate Congress, like the Senate, which is a continuing body, and that when a Congress expires by limitation his authority to approve bills of that Congress is gone.

> If it were otherwise, an incoming President might approve bills of Congress belonging to the official term of his predecessor, with the merits of which he is not expected to be familiar, and for the consideration of which he would not have the ten days secured by the Constitution unless it should be held that bills may be presented to the President for approval after the Congress expires, which I apprehend would not be seriously urged by anybody.

In 1867 President Johnson refused to sign a bill during a recess of Congress between March 30 and July 3, 1867, but filed it in the State Department with the following endorsement:

> It is not believed that the approval of any bill after the adjournment of Congress, whether presented before or after such adjournment, is authorized by the Constitution of the United States, that instrument expressly declaring that no bill shall become law the return of which may have been prevented by the adjournment of Congress. To concede that, under the Constitution, the President, after the adjournment of Congress, may, without limitation in respect to time, exercise the power of approval and thus determine at his discretion whether or not bills shall become laws, might subject the legislative and executive departments of the Government to influences most pernicious to correct legislation and sound public morals, and, with a single exception, occurring during the prevalence of civil war, would be contrary to the established prac-

> tice of the Government from its inauguration to the present time. The bill will therefore be filed in the office of the Secretary of State without my approval.

In March, 1887, Congress passed a River and Harbor bill shortly before adjournment, and Mr. Willis, Chairman of the House Committee, presented to President Cleveland a brief supporting the power to approve a bill after adjournment. (See Nation, March 10, 1887, p. 197.) It has been suggested that Attorney General Garland advised the President he did not have the power for the reason that he was a part of Congress in this respect and could not act after the Congress had ceased to exist. There is no record in the Department of Justice of any opinion by Attorney General Garland on the subject. The President did not sign the bill.

There next arose, in December, 1892, the question as to the power of a President to approve bills during the recess of Congress from December 22, 1892, to January 4, 1893, and in reliance on an opinion by Attorney General Miller (20 Op. A. G. 503) President Harrison signed a group of bills during the recess, an action which was subsequently approved by the Court of Claims in *United States* v. *Weil, supra,* and by this Court in *La Abra Silver Mining Co.* v. *United States, supra.*

The question does not seem to have arisen again until 1920, when Attorney General Palmer advised President Wilson that he had power to approve

bills after adjournment *sine die* of the session of Congress at which the bills were passed but within ten days (Sundays excepted) after they had been presented to him. (32 Op. A. G. 225.) In reliance on that opinion, President Wilson signed eight bills after the adjournment of Congress, the most important of which was the Act creating the Federal Power Commission. (Rogers, *The Power of the President to Sign Bills after Congress has Adjourned,* 30 Yale Law Journal 1, at p. 2, note 3.) The validity of these measures has never been questioned on the ground that they were not properly approved. The opinion of the Attorney General, dated June 19, 1920, is a very clear and able document, and while dealing with the adjournment of a session and not the expiration of a Congress, its reasoning is applicable here. Except for the group of bills signed by President Wilson after the adjournment *sine die* of a session of the 66th Congress, the Presidents appear to have continued the practice of signing bills before adjournment until President Hoover in March, 1931, signed a number of bills after the expiration of the 71st Congress but within ten days after they were presented to him, this action being taken in reliance on an opinion of the Attorney General (36 Op. A. G. 403) which adopted the reasoning of the opinion of Attorney General Palmer but went further and held that there was no distinction between the adjournment of a session and the final adjournment or expiration of a Congress.

Further discussion of the precedents will be found in the able article in the Yale Law Journal by Professor Lindsay Rogers, above referred to, in the opinion of the Attorney General of June 19, 1920 (32 Op. A. G. 225), and in 32 American Law Review 208. There have been expressions of opinions in Congress and by Presidents to the effect that a measure could only be approved while Congress was in session, and, with the exceptions noted, it has been the traditional practice for Presidents to approve measures before adjournment.

It is obvious that there has been no controlling practical exposition of the Constitution. The practice of approving bills before adjournment is a construction of a negative character and not an affirmative assertion that approval must be given, if at all, before adjournment, and the practice seems to have been followed out of abundant caution to avoid rather than decide the question. It is only in recent years that the volume of legislation presented to the President for consideration at the end of a session has been so large as to make the question a live one.

II

THE CONSTITUTIONAL PROVISION, FAIRLY CONSTRUED, PERMITS THE PRESIDENT TO APPROVE BILLS AFTER THE FINAL ADJOURNMENT OF CONGRESS BUT WITHIN TEN DAYS, SUNDAYS EXCEPTED, AFTER THEY HAVE BEEN PRESENTED TO HIM

The pertinent provisions of Section 7 of Article I of the Constitution (*supra* p. 2) deal with three contingencies: First, approval of a bill by signing

it; second, disapproval of a bill by return of it with objections; and third, failure either to approve by signing it, or disapprove by returning it within ten days after it is presented to the President, in which case (a) if Congress has not adjourned the bill becomes a law, (b) if Congress has adjourned the bill does not become a law.

It is provided that every bill which shall be passed, before it becomes a law, shall be presented to the President and "if he approve he shall sign it." So far, there is no time limit on its approval. There is no express provision that the President must sign while Congress is in session. The other provisions of this section deal with the matter of return of measures which the President does not approve. The two principal arguments against the power of the President to approve measures after final adjournment of the Congress which passed them are those advanced by the Judiciary Committee of the House in 1863, that if the President can approve a bill after adjournment there is no limit on the time within which he may act which would render the laws of the country too uncertain and that the President is a constituent part of the legislative branch when approving bills and that when the Congress expires his functions end.

The first objection is not supported by the provisions of Section 7 of Article I. If the President desires to approve a bill after adjournment, he must approve it within ten days after it is pre-

sented to him in order to prevent the operation of that clause which says "if any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law." Under this provision, if the ten days are allowed to expire without approval and meanwhile the Congress has adjourned, the bill shall not be a law, it dies, and that is the end of the matter; and where these conditions occur it may not fairly be said that the President by action after the ten days can resuscitate the measure by giving it his approval. The purpose of the Constitution is to allow the President ten days after a bill is presented to him to consider whether he shall approve or disapprove (*The Pocket Veto Case,* 279 U. S. 655, 677), and that limitation in time remains in effect although Congress may have adjourned. In *La Abra Silver Mining Co.* v. *United States, supra,* at page 454, the Court said:

> The Constitution is silent as to the time of his signing, except that his approval of a bill duly presented to him—if the bill is to become a law merely by virtue of such approval—must be manifested by his signature within ten days, Sundays excepted, after the bill has been presented to him.

The Constitution declares that in the event of an adjournment a bill shall not become a law if the

President does not sign it. It does not declare that a bill shall not become a law although he does sign it. The contingency provided for is the nonapproval of an act after the adjournment of Congress with a consequent inability to return it to the House in which it originated. It declares what shall happen in case of nonapproval. It does not declare that the same thing shall happen in case of approval. *United States* v. *Weil*, 29 C. Cls. 523, 538.

The other argument against the power to approve bills after adjournment is equally unsound. The contention that the President is a part of the Congress and that he can not function when Congress is not in session is not supported by any words of the Constitution. It is an assertion that the President is a part of each separate Congress and if it is in existence, though not in session, he may approve bills. It is nothing but a political theory and was rejected in part by this Court in *La Abra Silver Mining Co.* v. *United States, supra,* which sustained the presidential approval of a measure during a recess. This theory has been discussed in *United States* v. *Weil, supra,* page 538, in the Yale Law Journal, Volume 30, p. 1, and in many of the State decisions hereafter referred to. In *Fowler* v. *Peirce,* 2 Cal. 165, the court stated it as follows:

> This power is *a unit,* though distributed; and the parts can only act in unison. Whenever a part ceases to act, the whole becomes inoperative. The executive act owes its

> validity to the existence of the legislative body. Upon the adjournment of that body, the power ceases, and all acts of a legislative nature are void.

The trouble with this theory is that there is nothing in the Constitution to support it. The House Judiciary Committee in 1864 relied on the "spirit" of the Constitution to sustain it.

Mention has been made of the situation arising when the Congress expires at the time the President's term ends. With reference to this, when expressing the opinion that the President can not approve a bill after the Congress which passed it has expired, Chief Justice Richardson, of the Court of Claims, said (29 C. Cls. 549):

> If it were otherwise, an incoming President might approve bills of a Congress belonging to the official term of his predecessor, with the merits of which he is not expected to be familiar, and for the consideration of which he would not have the ten days secured by the Constitution unless it should be held that bills may be presented to the President for approval after the Congress expires, which I apprehend would not be seriously urged by anybody.

Such a situation can not arise. The necessary implication from the words of the Constitution is that a bill must be "presented" to the President by the Congress which passed it. After that Congress has expired there is no authority left to present it. The Congress which has expired is not in

existence to present its bills to the incoming President, and the latter can not act on bills not "presented" to him.

No practical reason has ever been given to support the contention that the President should not be permitted to approve measures after Congress adjourns. Congress has no function to perform in respect of measures approved by the President. While it has been the traditional practice for the President to advise the Congress that he has approved bills, there is no action to be taken by Congress after such approval.

Public interest would suffer by the requirement that the President must act before adjournment. During the period from February 28, 1931, to noon of March 4, 1931, 269 bills were presented to the President by Congress for his consideration, 184 of which, many of great importance, were presented to him during the last twenty-four hours of the session. It is impossible for a President to give adequate consideration to such a large number of measures in so short a time before adjournment.

There is no real distinction to be drawn between the case dealt with in *La Abra Silver Mining Co.* v. *United States, supra,* involving a short recess, the case considered in Attorney General Palmer's opinion in 1920, where the session had ended but the Congress had not expired, and the case at bar, where the measure was approved after the final adjournment of the Congress. In the *La Abra* case this Court said (pp. 454–455):

We perceive nothing in these constitutional provisions making the *approval* of a bill by the President a nullity if such approval occurs while the two Houses of Congress are in recess for a named time. After a bill has been presented to the President, no further action is required by Congress in respect of that bill unless it be disapproved by him and within the time prescribed by the Constitution be returned for reconsideration. It has properly been the practice of the President to inform Congress by message of his approval of bills, so that the fact may be recorded. But the essential thing to be done in order that a bill may become a law by the approval of the President is that it be signed within the prescribed time after being presented to him. That being done, and as soon as done, whether Congress is informed or not by message from the President of the fact of his approval of it, the bill becomes a law, and is delivered to the Secretary of State as required by law.

Much of the argument of counsel seems to rest upon the provision in relation to the final adjournment of Congress for the session, whereby the President is prevented from returning, within the period prescribed by the Constitution, a bill that he disapproves and is unwilling to sign. But the Constitution places the approval and disapproval of bills, as to their becoming laws, upon a different basis. If the President does not approve a bill, he is required within a named time to send it back for consideration. But if by its action, after the presen-

> tation of a bill to the President during the time given him by the Constitution for an examination of its provisions and for approving it by his signature, Congress puts it out of his power to return it, not approved, within that time to the House in which it originated, then the bill falls, and does not become a law.

The State decisions are conflicting and arise under varying provisions of State constitutions. The New York Court of Appeals in *People* v. *Bowen,* 21 N. Y. 517, held that in the provision of the constitution of the State of New York (from which the provision of the Federal Constitution was taken) there was nothing forbidding the approval of a bill by the Governor after the session of the legislature was terminated by adjournment.

Discussion of other State cases will be found in Barnett, *The Executive Control of the Legislature,* 41 Am. L. Rev. 215, and in a note in 37 L. R. A. 391. See also *Fowler* v. *Peirce,* 2 Cal. 165; *Opinion of the Justices,* 23 Fla. 297; *Boyd* v. *Deal,* 24 Fla. 293; *Solomon* v. *Commissioners,* 41 Ga. 157; *State* v. *Fagan,* 22 La. Ann. 545; *Lankford* v. *County Commissioners,* 73 Md. 105; *Johnson* v. *Luers,* 129 Md. 523; *Opinion of the Justices,* 3 Mass. 567; *Detroit* v. *Chapin,* 108 Mich. 136; *State* v. *County of Coahoma,* 64 Miss. 358, overruling *Hardee* v. *Gibbs,* 50 Miss. 802; *Trustees of School District No. 1* v. *County Commissioners of Ormsby County,* 1 Nev. 334; *Opinion of the Justices,* 45 N. H. 607; *Arnold* v. *McKellar,* 9 S. C. 335; *Johnson City* v. *Tennessee Eastern Electric Co.,* 133 Tenn. 632.

In *Seven Hickory* v. *Ellery*, 103 U. S. 423, a case arising in the Circuit Court of the United States for the Southern District of Illinois, this Court construed a provision of the constitution of Illinois, which in all material respects was substantially the same as the provision in the Federal Constitution excepting that the last clause read as follows:

> If any bill shall not be returned by the governor within ten days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the General Assembly shall, by their adjournment, prevent its return; in which case, *the said bill shall be re-returned on the first day of the meeting of the General Assembly after the expiration of said ten days, or be a law.* (Italics ours.)

This Court said (pp. 424–425):

> The single question we have now to consider is whether a bill passed by both Houses, and presented to the governor before the legislature adjourns, becomes a law when signed by the governor after the session of the legislature has been terminated by an adjournment, but within ten days from its presentation to him. We have no hesitation in saying it does. There is certainly no express provision of the Constitution to the contrary. All that instrument requires is that, before any bill, which has passed the two Houses, can become a law, it shall be presented to the governor. If he approves it, he may sign it. If he does sign it within

the time, the bill becomes a law. That is not said in so many words, but is manifestly implied. After a bill has been signed, the legislature has nothing more to do with it. Undoubtedly, if the legislature should be in session when the signing is done, it would not be inappropriate for the governor to communicate his approval to one or both the Houses; but there is nothing in the Constitution which requires him to do so. The filing of the bill by the governor in the office of the secretary of state with his signature of approval on it is just as effectual in giving it validity as a law, as its formal return to the legislature would be. The bill becomes a law when signed. Everything done after that is with a view to preserving the evidence of its passage and approval.

The Court further said (pp. 425–426):

So that, under the Constitution of Illinois, if a bill is passed by both Houses of the legislature it becomes a law—1, when approved and signed by the governor within ten days after its presentation to him; 2, when the legislature being in session, the governor fails to sign the bill or return it with his objections to the House in which it originated within the ten days; 3, when, after being returned within the ten days, it is passed by the requisite majorities over his objections; 4, when, if the session of the legislature terminates by an adjournment before the expiration of the ten days, he fails to return the bill with his objections the first day of the

next session; and, 5, when, having returned it with objections on the first day of the next session, it is again passed by the requisite majorities in both Houses. And it becomes a law at the time when the event happens which is to give it validity. In the present case the bill was approved and signed within the ten days, and, therefore, as we think, it became a law from the date of the approval, notwithstanding the legislature was not in session at the time. This is in accordance with the ruling of the Court of Appeals of New York in *The People* v. *Bowen* (21 N. Y. 517); of the Supreme Court of Louisiana in *State, ex rel. Belden, Attorney-General,* v. *Fagan* (22 La. Ann. 545), and of the Supreme Court of Georgia in *Solomon* v. *Commissioners of Cartersville* (41 Ga. 157), upon provisions somewhat similar in the constitutions of those States.

Such differences as are found between the provisions of the Federal Constitution and those of the Illinois constitution have no direct bearing here. The adjournment of the Illinois legislature referred to in the *Seven Hickory* case was not the expiration of the legislature but the end of the regular session. Special sessions of the same legislature were held later in the same year.

CONCLUSION

The conclusion should be that there is nothing in the Constitution to sustain the view that approval must be given prior to final adjournment of the

Congress, and the question certified should be answered in the affirmative.

Respectfully submitted.

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